



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Friday, January 31, 2025, 9:15 a.m.
State Capitol, Conference Room 016

By

Jennifer Awong
Staff Attorney, Criminal Administrative Division
Circuit Court of the First Circuit

Bill No. and Title: Senate Bill No. 725, Relating to Bail.

Purpose: Requires judges to make certain findings regarding a defendant's ability to afford bail.

Judiciary's Position:

The Judiciary takes no position on intent of the proposed legislation and notes that the Judicial Council is currently conducting the Penal Code Review as required by Act 245 (2024). Included in the Penal Code Review, as one of the subcommittees, is a committee conducting a comprehensive review of Chapter 804 where these matters may be more thoroughly addressed. The report from the advisory committee will be presented to the Legislature at the end of this year. Therefore, the Judiciary respectfully requests that this bill be deferred until the next legislative session.

Should the proposed legislation not be deferred, the Judiciary provides the following comments regarding the provisions of the bill. First, the Judiciary respectfully disagrees with the statements in Section 1 of the bill which imply that the Judiciary has not complied with the intent and specific provisions of Act 179 (2019). Bail is set by judges throughout the criminal case in accordance with Hawai‘i Revised Statutes Section (“HRS §”) 804-9 provisions that:

The amount of bail rests in the discretion of the justice or judge or the officers named in section 804-5 and shall be set in a reasonable amount



Senate Bill No. 725, Relating to Bail.
Senate Committee on Judiciary
Friday, January 31, 2025
Page 2

based upon all available information, including the offense alleged, the possible punishment upon conviction, and the defendant's financial ability to afford bail. The bail amount should be so determined as not to suffer the wealthy to escape by the payment of a pecuniary penalty, nor to render the privilege useless to the poor.

HRS § 804-9 (2019). Further, defendants are afforded an immediate review of bail under the provisions of HRS § 804-7.5 which provides that defendants have a right to a prompt bail hearing after formal charge and detention where they are represented by counsel, where they are afforded the opportunity to testify, and where the defendant and the prosecution have the “opportunity to present information by proffer or otherwise.” HRS § 804-7.5 (2019). These provisions, although passed in 2019, went into effect on January 1, 2020. Since that time a bail hearing is conducted at every arraignment and, if requested, is continued to a later time for the taking of additional evidence and argument. In addition, a motion for supervised release, a motion to reduce bail, and/or a motion to set bail can be filed with the court any time after arraignment, with an evidentiary hearing held shortly thereafter.

Second, the Judiciary respectfully suggests that in order to best achieve the stated goals of the proposed legislation, namely to require on the record findings on a defendant’s ability to afford bail, any revisions proposed by this bill to be made in HRS § 804-9 should instead be placed in HRS § 804-7.5 which already requires an on the record bail hearing, or in a separate stand-alone section to be considered whenever an on the record bail hearing is conducted. HRS § 804-7.5 by its nature requires the court to review the bail amount set in accordance with HRS § 804-9, and examine the conditions for any release on bail set forth in HRS § 804-7.1. It is a hearing conducted on the record. While HRS § 804-9 does dictate the determination of the amount of bail throughout a defendant’s case, the initial setting of bail by the “bail judge” in HRS § 804-5 (justices, judges, or the sheriff, sheriff’s deputy, chief of police, or the chief’s designee) is not a determination that is made “on the record.” The initial setting of bail is made before a case is filed with the court, at times and locations where there is no judicial recording of the determination because no case has been filed with the court and no hearings have been held. The only exception is in the case of a grand jury indictments.

In cases where punishment for the offense charged does not exceed two years, bail is set by persons other than judges in accordance with HRS § 804-9. Only when an arrest warrant is issued, or bail is initially set, in information charging and complaint cases, does a judge review the information provided by the prosecutor and sets bail in an amount in their discretion pursuant to HRS § 804-9. In neither of these instances is there an “on the record” determination of bail. In grand jury indictment cases, upon receiving the return of the grand jury, the court will set bail in accordance with HRS § 804-9 on the record, after hearing from the prosecutor on matters of bail. All of these bail determinations are then reviewed during the on the record prompt bail hearing afforded by HRS § 804-7.5.

At the HRS § 804-7.5 bail hearing, consideration and determination of continued bail is made after review of any information provided at the time, including pretrial bail reports (if



available) and any information provided by the defendant to the court. In addition, defendants can request a further hearing if necessary.¹ This bail hearing occurs either at the hearings for a defendant's initial appearance or at their arraignment or, in some cases, at both hearings. As drafted, SB725's requirement that the determination of bail under HRS § 804-9 be "on the record" will require substantive changes to other statutory provision, which in turn may impact the needs of the Judiciary, the police departments, the sheriff division, and other agencies involved in such processes.

Finally, the Judiciary respectfully provides the following comments with respect to the proposed amendments:

- Subsection 804-9(b)(2) implies that the Department of Corrections and Rehabilitation's Intake Service Center (ISC) makes findings regarding the defendant's financial ability to afford bail. No such findings are made by ISC. HRS § 353-10(b)(8) requires ISC to "[m]ake inquiry with the offender concerning the offender's financial circumstances and include this information in the bail report." When that information is provided, it is considered by the court.
- Pretrial bail reports are not available at the initial setting of bail as that process is described in HRS § 804-5. If ISC were able to prepare and provide pretrial bail reports containing information regarding (1) a defendant's ability to afford bail and (2) findings regarding the amount of bail a defendant could afford to judges (and other persons) authorized to set bail HRS § 804-9 before being asked to set bail, the Judiciary would welcome such reports and would commit to having judges review such reports in setting bail under HRS § 804-9.
- Pretrial bail reports for felony cases are often not available at defendants' initial appearance at District Court or at preliminary hearing. Indeed, pretrial bail reports are often times not available where the individual refuses to participate in the interview or where the person is "subject to county or state detainers or holds, persons detained without bail, persons detained for probation violation, persons facing revocation of bail or supervised release, and persons who have had a pretrial risk assessment completed prior to admission to a community correctional center." HRS § 353-10(b)(3).

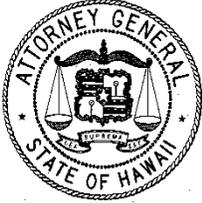
In conclusion, while the Judiciary takes no position on the policy determination to require the court to set forth its findings on the record, the Judiciary respectfully requests that this matter be deferred until the conclusion of the Penal Code Review at the end of the year. If the proposed legislation moves forward, the Judiciary believes that any provisions to require the court to do so should be placed in HRS § 804-7.5, as proceedings under HRS § 804-7.5 are already conducted on the record.

¹ Furthermore, as noted above, the right to bail continues throughout the case and defendants are always able to file a motion with the court for bail reduction or release.



Senate Bill No. 725, Relating to Bail.
Senate Committee on Judiciary
Friday, January 31, 2025
Page 4

Thank you for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:
S.B. NO. 725, RELATING TO BAIL.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY

DATE: Friday, January 31, 2025 **TIME:** 9:15 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Tricia M. Nakamatsu, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments on this bill and suggests an alternative approach.

The purpose of this bill is to require "bail judges" as defined in the bill to make express findings on the record regarding a defendant's financial ability to afford bail, thereby creating a fairer pretrial system and ensuring that a sufficient record is developed to enable meaningful appellate review of bail decisions.

The specific requirements may present several issues in practice and may not achieve the intended outcome, as explained below:

(1) Sheriffs and police may be precluded from releasing anyone on bail

Although the bill defines a "bail judge" as "the justice, judge, or officers named in section 804-5" (page 5, lines 13-14), other wording in the bill seems to presume that the bail judge is in fact a justice or judge who is able to "make findings on the record" (page 4, lines 11-12). Because sheriffs and police officers have no means of complying with this requirement, that may render it impossible for them to release anyone on bail, despite section 804-5, Hawaii Revised Statutes (HRS), allowing them to do so "where the punishment for the offense charged may not exceed two years' imprisonment."

(2) Some defendants may be held longer to obtain a pretrial bail report

The bill would require bail judges to "adopt or reject the findings of the intake service center" (ISC) (page 4, lines 17-18), as presented in the ISC's pretrial bail report.

In District Court cases, which typically involve misdemeanor or petty misdemeanor crimes, defendants who do not post the bail amount set by sheriffs or police are held overnight or over the weekend, pending their initial hearing before a judge. While the ISC makes every effort to produce a bail report for all those defendants prior to the initial hearing, that is not always possible given the volume of cases or available staffing on a particular day. If judges are required to wait for a bail report before making their findings (page 4, lines 17-18), this could potentially delay a defendant's bail hearing. Pursuant to section 353-10(b)(9), HRS, ISC has up to three working days to generate a pretrial bail report.

(3) The requirement on page 5, lines 4-7, may be unfeasible

To require judges to "[e]xplain why no alternative, less restrictive financial or non-financial restrictions will suffice to ensure the defendants presence in court and the protection of the public" (page 5, lines 4-7), presumes that a judge would have to verbally consider and rule out every possible alternative, on the record. While it may be possible for judges to run down the entire list of conditions of release on bail, as listed under section 804-7.1(1) through (12), for every case on the docket, this would likely cause substantial delays in already-heavy caseloads, particularly where many of these conditions, such as geographical restrictions under subsection (2), prohibiting the defendant from indulging in intoxicating liquors or certain drugs under subsection (3), or mental health treatment or testing under subsection (7), are likely inapplicable to and need not even be considered for the vast majority of cases. Moreover, it is unclear whether any of these conditions of release on bail, as provided under section 804-7.1, HRS, would be "less restrictive" than the monetary bail that judges often order with no other conditions attached.

ALTERNATIVE APPROACH

Despite the issues presented by the approach taken in this bill, section 1 of the bill makes clear that the legislature continues to be concerned about "the judiciary [making] 'little, if any, inquiry . . . concerning the defendant's financial circumstances,' during bail hearings" (page 2, lines 19-21). If this is the concern that legislators would most like to address, a more direct and tailored remediation—also less drastic—would

be to require that judges make such an inquiry on the record, in every case being considered for bail. This could be done by deleting page 4, line 1, to page 5, line 14, and instead amending section 804-9, HRS, as follows:

§804-9 Amount. The amount of bail rests in the discretion of the justice or judge or the officers named in section 804-5 and shall be set in a reasonable amount based upon all available information, including the offense alleged, the possible punishment upon conviction, and the defendant's financial ability to afford bail~~[-]~~, after making inquiry with the defendant concerning the defendant's financial circumstances. A record of this inquiry, the defendant's response, and the justice's or judge's or the officers' consideration thereof shall be made and retained for the duration of the criminal proceedings. The bail amount should be so determined as not to suffer the wealthy to escape by the payment of a pecuniary penalty, nor to render the privilege useless to the poor.

This would address the concern noted above, while avoiding the foreseeable issues noted by the Department. The suggested wording is borrowed and slightly modified from wording that was added to section 353-10(b)(8), HRS, under section 13 of Act 179, Session Laws of Hawaii 2019.

Thank you for the opportunity to testify on this bill.

JOSH GREEN, M.D.
GOVERNOR



MARK PATTERSON
CHAIR

CHRISTIN M. JOHNSON
OVERSIGHT COORDINATOR

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STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
E HUIKALA A MA'EMA'E NŌ
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TO: The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: Senate Bill 725, Relating to Bail
Hearing: Friday, January 31, 2025; 9:15 a.m.
State Capitol, Room 016

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Hawaii Correctional System Oversight Commission (HCSOC) **supports** Senate Bill 725, Relating to Bail, which requires judges to make certain findings regarding a defendant's ability to afford bail in addition to requiring an explanation as to why no other less restrictive financial or non-financial restrictions will suffice.

The use of cash bail disproportionately impacts low-income individuals, who often remain detained solely because they cannot afford bail, while wealthier defendants are released. Moreover, pretrial detention for low-risk individuals disrupts employment, housing, and family stability, creating lasting economic and social hardships that extend beyond the individual to their community. Additionally, the reliance on cash bail exacerbates racial and ethnic disparities in the criminal justice system, eroding public trust and highlighting systemic inequities.

This bill requires judges to consider the offender's ability to financially afford the set bail amount which would address the concerns above. For these reasons, the Commission supports this bill.

Should you have additional questions, the Oversight Coordinator, Christin Johnson, can be reached at 808-900-2200 or at christin.m.johnson@hawaii.gov. Thank you for the opportunity to testify.

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SB NO. 725 RELATING TO BAIL

Chair Rhoads, Vice Chair Chang, and Members of the Committee

The Office of the Public Defender (OPD) **SUPPORTS THIS BILL**

LATE

Despite numerous working groups, reports, and suggestions by both governmental agencies and advocacy groups over the last decade, the use of monetary bail to hold individuals in pretrial incarceration remains prevalent in Hawaii. This bill represents a modest, conservative approach to current due process regarding bail hearings.

As pretrial incarceration means as much or more to defendants than final sentencing, it is imperative that the justice system engage in a full exploration of due process in a bail hearing. Any argument against adding a basic investigation into an individual's ability to pay bail is not in support of the constitution, or the wording of HRS 804-9 which requires that the court set bail "based on all available information."

This bill adds a formal discussion with a defendant about the use of money in obtaining freedom. In having a conversation with a defendant about the importance of returning to court and complying with the orders of the court, a judge retains the decision making ability after learning of a defendant's circumstances. We believe this will lead to individuals returning to court and in compliance with the court. We believe this is a more humane and appropriate way to deal with pretrial conditions than the current system of bail, which is inequitable.

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO SENATE BILL NO. 725

A BILL FOR AN ACT
RELATING TO BAIL

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Friday, January 31, 2025 at 9:15 a.m.
Via Videoconference
State Capitol Conference Room 016
415 South Beretania Street

LATE

Honorable Chair Rhoads, Vice-Chair Gabbard, and Members of the Committee on Judiciary. The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in opposition to Senate Bill No. 275

This bill was drafted with the intention of requiring judges to make certain findings regarding a defendant's ability to afford bail.

This legislation is not necessary nor feasible. The additional burdens placed upon the Judiciary, Hawai'i Intake Services Center, and law enforcement will further exacerbate ongoing concerns related to staff shortages, additional overtime expenses, and overloaded court dockets and calendars.

Here, on Hawai'i Island, a need for additional Circuit and District Court judges and staff has existed for many years. Now to add to that concern, there is a prevalent shortage of available defense counsel resulting in continuances and sometimes the premature release of defendants because the Court has not been able to appoint counsel. In addition, the Office of the Public Defender, has had to triage scheduling, assign felony attorneys to non-felony matters, required Honolulu based public defenders to travel off island for coverage, and has been withdrawing from all DUI and class A felony cases in Kona citing staff and personnel shortages. Perhaps, these are the types of priorities that should be considered to advance efforts towards the purpose of Act 179 which was to "support best practices for an effective correctional system."

Hawai'i Island is at a substantial disadvantage to address crime motivators such as substance abuse, mental health, and homelessness, given our limited community resources and funding, geographic restrictions, limitations of court supervision authorities, and shortage of

direct service providers. In the alternative to prioritizing the release of defendants by creating additional burdens to the Judiciary, Hawai'i Intake Service Center, and law enforcement we believe that by supporting funding, staffing, and programs for supervision and reintegration services and prioritizing the utilization of alternative forms of supervision, such as electronic monitoring where appropriate, we will be able to ease overcrowding concerns, assist incarcerated persons reintegrating back into society, and reduce recidivism.

As discussed within the Preamble, our Office agrees that pretrial detention should be employed to ensure the safety of the public and the defendant's presence in court. To promote public safety a defendant's criminal history should be part of the assessment when setting appropriate bail amounts. As such, our Office proposes that if changes are made to § 804-9, the included verbiage be considered:

(a) The amount of bail rests in the discretion of the [justice or judge or the officers named in section 804-5] bail judge and shall be set in a reasonable amount based upon all available information, including the offense alleged, the possible punishment upon conviction, **defendant's criminal history**, and the defendant's financial ability to afford bail.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai'i, opposes Senate Bill No. 275 and submits the aforementioned comments for the Committee's consideration. Thank you for the opportunity to testify on this matter.

COMMUNITY ALLIANCE ON PRISONS

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Today's Inmate; Tomorrow's Neighbor



COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Friday, January 31, 2025

9:15 AM

Room 016 & VIDEOCONFERENCE

STRONG SUPPORT FOR SB 725 - BAIL

Aloha Chair Rhoads, Vice Chair Gabbard and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the 3,697 Hawai`i individuals living behind bars¹ and under the “care and custody” of the Department of Corrections and Rehabilitation on January 20, 2025. We are always mindful that 937 of Hawai`i’s imprisoned male population (49%) are serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates the opportunity to **strongly support SB 725** that requires judges to make certain findings regarding a defendant's ability to afford bail.

In the interest of justice, transparency, and accountability, we agree that the judge must be required to make findings regarding a defendant’s ability to afford bail, thereby creating a fairer pretrial system and ensuring that a sufficient record

¹ DCR Weekly Population Report, January 20, 2025

<https://dcr.hawaii.gov/wp-content/uploads/2025/01/Pop-Reports-Weekly-2025-01-20.pdf>
Citizensunnn

is developed to enable meaningful appellate review of bail decisions. When monetary bail is a condition of release the judge **shall make findings on the record** to consider the defendant's ability to afford bail and determined that the defendant is able to pay the amount of monetary bail required.

This is so important as so many justice-involved individuals are from challenged communities that lack an array of programs and services to address the needs of their people. We know of people who could not make small bail amounts of \$10 - \$50 who were then incarcerated for \$307/day, as reported by the Director of DCR in the FIN and WAM budget hearings. How is this fair to the defendant and to the community since we foot the bill?

A look at the latest Department of Corrections and Rehabilitation's Weekly Population Report dated January 20, 2025, shows that 25% of the total incarcerated population of 3, 697 are pre-trial felons (773) and pre-trial misdemeanants (136). These 909 individuals cost the community \$282, 133 a day, \$8,463,990 a month, and a staggering \$102,978,545 a year.

Now couldn't that \$8,463,990 a month and \$102,978,545 a year that the community is spending to incarcerate pretrial detainees be better spent providing the services that are lacking in some of the most impacted communities?

The community has been fighting to eliminate cash bail for many, many years and each time, the prosecutors kill the bill. After the 2021 bail bill, the Honolulu Prosecutor was interviewed by Civil Beat and when asked about the bail bill he said that they could have lived with the bill. This is one of the reasons that people have lost trust in the system of justice. When prominent officials say things like this, the community knows that it is a political statement and that justice took a back seat to politics. Auwe!

Community Alliance on Prisons commends the committee for hearing this bill and for your willingness to fix our broken system where money seems to trump (pun intended) justice. We hope the committee passes this measure as a step to make our system of justice more fair and equitable for all of Hawai'i's people.

Mahalo nui!

SB-725

Submitted on: 1/28/2025 5:36:34 PM

Testimony for JDC on 1/31/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Support	Written Testimony Only

Comments:

We think this is a good idea. We have long been strong advocates for bail reform, especially since our focus is on defendants with mental health issues who fail to receive adequate care while they are in custody. In the case of pretrial detainees many such people are there for fairly minor offenses simply because they could not afford to post bail. We thought this issue had been resolved several years ago but apparently that is not the case. For that reason we see this bill as a good step in a necessary direction.



Committee: Judiciary
Hearing Date/Time: Friday, January 31 2025 at 9:15AM
Place: Conference Room 016 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of S.B. 725 Relating to Bail**

Dear Chair Rhoads, Vice Chair Gabbard, and Committee Members:

The ACLU of Hawai'i strongly supports S.B. 725 1) requiring written findings on why conditions have been imposed upon a defendant and 2) setting standards for when an individual should be considered unable to pay bail. These are both important stepping stones towards achieving a justice system that is blind to wealth inequality, and instead carefully considers an individual's circumstances and actions rather than their bank accounts.

In *U.S. v. Salerno*, 481 U.S. 739 (1987), the U.S. Supreme Court held that “in our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”

Requiring written findings under S.B. 725 will safeguard against hasty and opaque decision-making relating to pretrial decisions in alignment with the *Salerno* decision. It also provides greater insight into *why* people are held in pretrial detention. Understanding if there are legitimate reasons for detention, rather than mere inability to pay, is important for helping individuals understand their own circumstances. The reasons for one's imprisonment should not be a black box. Further, the bill provides necessary information for making future reforms to the criminal justice system writ large, especially if decisions about release are not being made consistently or in the public interest.

Consider that currently over 56% of Hawai'i's jail population is pretrial¹. **In December 2024, over 71% of the people at the OCCC jail were pretrial.**² These individuals have not been convicted of any crime but remain behind bars largely due to an outdated reliance on cash bail and a lack of alternative pretrial systems. Reducing the pretrial detention population also is a clear first step to address problems of overcrowding given that the total number of people incarcerated in Hawai'i is decreasing over time, but our pretrial population is increasing.

The evidence suggests that pretrial detention reforms do not have negative impacts on public safety, and has little impact on court appearances.³ A study by the Prison Policy Initiative found that releasing individuals pretrial does not negatively affect public safety.⁴ The study considered pretrial reforms in New Jersey, New Mexico, Kentucky, and New York. It also considered local reforms in SF (CA), Washington (DC), Philadelphia (PA), Santa Clara (CA), Cook County (IL), Yakima County (Wash), New Orleans (LA), Harris County (TX), and Jefferson County (CO). Re-offense or rearrest rates did not increase after pretrial reforms, and in some cases declined.

¹ Department of Corrections, January 13th 2025 report

² Department of Corrections, End of Month Population Report for December 2024.

³ Insha Rahman, Undoing the Bail Myth: Pretrial Reforms to End Mass Incarceration, 46 Fordham Urb. L.J. 845 (2019). Available at: <https://ir.lawnet.fordham.edu/ulj/vol46/iss4/2>

⁴ <https://www.prisonpolicy.org/blog/2020/11/17/pretrial-releases/>

- Harris County, Texas: approximately tens of thousands of people charged with misdemeanors have avoided pretrial incarceration since the County ended cash bail (according to independent federal data).⁵
- New Jersey’s 2017 cash bail reform law successfully reduced the jail population by 20% and overall crime (including violent crime) decreased as well.⁶
- Cass County, Indiana: Prior to reform, the average jail population was nearly 50% over capacity, with approximately 70% of people pre-trial. In 2018 the county adopted several pre-trial diversion programs such as voluntary referrals to support services, decreased reliance on monetary bonds, and data transparency on pretrial outcomes. In 2022, the pretrial population had decreased by 80%, or 3,340 people, saving nearly \$1 million in detention costs.⁷

Holding people unnecessarily in pretrial detention **contributes to overcrowding, staffing issues, and worsening facility conditions.** Concerningly, it also has been found to have a criminogenic effect. One study from October 2024 found that pretrial detention increases the odds for someone to miss a court appearance or be arrested by roughly 50% and increases the odds of convictions by 36%.⁸

Other research has found that even a short period of pretrial detention can have “cascading effects” on an individual, including threatening employment, housing stability, child custody, and health care access. These may contribute to increased likelihood of further involvement with the criminal justice system.⁹

Proposed Amendments:

These two amendments are drawn directly from H.B. 127, which makes similar contributions to S.B. 725 and H.B. 675.

First, amend HRS §804-9(c) as proposed in S.B. 725 to include:

“In the setting of bail, the following shall apply:

(1) The court shall exclude from consideration any income derived from public benefits; including supplemental security income, social security disability insurance, and temporary assistance for needy families; and any income below the federal poverty level;

(2) If the person has no income other than public benefits or is a member of a household having a household income below one hundred fifty per cent of the federal poverty level, the court shall presume that the person is unable to pay any bail amount; and

⁵ <https://www.wbur.org/hereandnow/2024/09/16/breaking-the-bond#>

⁶ <https://www.arnoldventures.org/stories/the-facts-on-new-jersey-bail-reform>

⁷ <https://www.arnoldventures.org/stories/small-county-big-results>

⁸ DeMichele, Matthew and Silver, Ian and Labrecque, Ryan, Locked Up and Awaiting Trial: A Natural Experiment Testing the Criminogenic and Punitive Effects of Spending a Week or More in Pretrial Detention (June 2, 2023).

⁹ See: Laura & John Arnold Foundation., *Pretrial Criminal Justice Research*

(2013), available at http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJResearch-brief_FNL.pdf; Megan Stevenson,

Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes 22 (Working Paper, 2016), available at

<https://www.law.upenn.edu/cf/faculty/mstevens/workingpapers/Distortion-of-Justice-April-2016.pdf>; Heaton et al., *The Downstream*

Consequences of Misdemeanor Pretrial Detention 3 (July 2016), available at <http://ssrn.com/abstract=2809840>;

<https://vera-institute.files.svdcn.com/production/downloads/publications/Justice-Denied-Evidence-Brief.pdf>

(3) If the person's household income, exclusive of any income derived from public benefits, is above one hundred fifty per cent of the federal poverty level, the court shall consider what the individual could reasonably pay within forty hours of arrest, subject to the exclusions in paragraph (1)."

This amendment makes the calculation of ability to pay bail more realistic and fair. Excluding public benefits from the assets an individual can use to pay bail reflects the reality of the financial situation of individuals—one cannot turn in food stamps to pay bail. Additionally, considering any individual making less than 150% of the federal poverty level protects indigent individuals. Individuals barely making more than the poverty level, but who would otherwise be allowed their freedom upon paying bail, should not be forced to choose between their bodily freedom and sinking further into poverty.

Second, amend HRS§804-4 to read:

“When a matter of right. (a) If the charge is for an offense for which bail is allowable under section 804-3, the defendant may be admitted to bail before conviction as a matter of right and under the least restrictive conditions required to ensure the defendant's appearance and to protect the public. The court shall enter on the record its written findings regarding why the conditions imposed on the defendant are necessary to ensure defendant's appearance, or to protect the public, or both. Except for section 712-1207(7), bail shall be allowed for any person charged under section 712-1207 only subject to the mandatory condition that the person observe geographic restrictions that prohibit the defendant from entering or remaining on public property, in Waikiki and other areas in the State designated by county ordinance during the hours from 6 p.m. to 6 a.m....[continued]”

The ACLU of Hawai'i notes that the requirement to provide bail under the least conditions required for appearance and public safety are already present in §804-4 as currently written. This amendment would serve to directly connect the right to bail under these least restrictive conditions with the obligation to enter written findings on these conditions.

Adopting S.B. 725 will help ensure that the freedom of individuals is not determined by their ability to afford bail. This will help create a more intelligible decision-making process for pretrial detention that will protect the freedoms of incarcerated individuals. Importantly, the example of other states that have instituted even stronger bail reforms suggests that these reforms will potentially decrease the criminogenic effect of pretrial detention without sacrificing public safety.

Sincerely,

Nathan Lee
Policy Legislative Fellow, ACLU Hawai'i

C: Carrie Ann Shirota, Policy Director

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization founded in 1965 that provides its services at no cost to the public and does not accept government funds.

SB-725

Submitted on: 1/29/2025 10:01:12 AM

Testimony for JDC on 1/31/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael EKM Olderr	Individual	Comments	Written Testimony Only

Comments:

I think the clear solution to overcrowding in our detainment centers, which I assume this bill is trying to tackle, is just not to have cash bail for non-violent offenders. Not only does the practice unfairly punish people from low-income families who are presumed innocent, but it unfairly affects marginalized groups, including native Hawaiians. We don't need to unnecessarily jail people who are not a threat to anyone or themselves. Please consider my testimony when finalizing this bill.

SB-725

Submitted on: 1/29/2025 2:58:45 PM

Testimony for JDC on 1/31/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Carla Allison	Individual	Support	Written Testimony Only

Comments:

I strongly support SB725

SB-725

Submitted on: 1/29/2025 9:17:59 PM

Testimony for JDC on 1/31/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Jacob Wiencek	Individual	Oppose	Written Testimony Only

Comments:

Aloha Committee Members,

Despite multiple attempts to pass so-called "bail reform", this legislature *and* the public have previously *REJECTED* these attempts. "Bail reform" does NOT make our communities safer. It only makes it easier for bad actors to get back on the streets sooner.

I STRONGLY URGE this Committee to REJECT this measure and focus on how to actually make our communities safer!

LATE

SB-725

Submitted on: 1/30/2025 1:54:14 PM

Testimony for JDC on 1/31/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Rita Kama-Kimura	Individual	Oppose	Written Testimony Only

Comments:

Please note that I oppose the passing of this bill SB725 Relating to Bail, it reminds me of a similar bill HB1336 2023 (relating to criminal justice reform).

SB725 is concerned with the “defendant” or perpetrator being unable to post bail due to their finances. Referencing, that jail time could lead to loss of job, housing or missing school!

As with HB1336, it mentions nothing about the victim(s) what they have or still might be going through, financially, emotionally etc.

This is truly an unfortunate situation, the lesson should be don’t do the crime! period! It’s not worth it!

Please do not move this bill forward. Instead find programs that will help these individuals going forward.

Mahalo ...

LATE

SB-725

Submitted on: 1/30/2025 2:01:11 PM

Testimony for JDC on 1/31/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Judi Chang	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill.

LATE

SB-725

Submitted on: 1/30/2025 2:06:55 PM

Testimony for JDC on 1/31/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Andrew Crossland	Individual	Oppose	Written Testimony Only

Comments:

I STRONGLY OPPOSE this Bill that makes our communities less safe. I urge all members of the Committee to **VOTE NO** on this Bill.

LATE

SB-725

Submitted on: 1/30/2025 9:21:25 PM

Testimony for JDC on 1/31/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
R. L. Souza	Individual	Oppose	Written Testimony Only

Comments:

Not surprisingly, lessening the consequences of crime doesn't decrease crime, it INCREASES it, which is why "bail reform" has been a colossal failure everywhere it's been implemented.

To suggest that one's socio-economic status is somehow an excuse for criminal behavior, or that the same consideration should be applied with respect to bail is not only condemning that individual to recidivism for lack of consequences, but it's insulting to all those of similar circumstances who somehow manage to live good, productive and upstanding lives.

Rewarding bad behavior only begets more bad behavior. Just ask New York how "bail reform" worked for them.

LATE

SB-725

Submitted on: 1/30/2025 10:41:41 PM

Testimony for JDC on 1/31/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Veronica Moore	Individual	Support	Written Testimony Only

Comments:

To: Karl Rhoads, Chair

Mike Gabbard, Vice Chair

Members of the Senate Committee on Judiciary

From: Veronica Moore, Individual Citizen

Date: January 30, 2025

RE: Upcoming Hearing for SB725

Measure Title: RELATING TO BAIL.

Report Title: Judges; Bail; Findings

To All Concerned,

My name is Veronica Moore and I am in support of Senate Bill 725 as I believe it will help to promote fairness and present a proactive approach to addressing unnecessary overincarceration. Thank you for introducing this bill and I appreciate the opportunity to present testimony regarding it.

Sincerely,

Veronica M. Moore